IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.2964 of 1999

Shri Shivajirao Balwantrao Jadhav — Petitioner
Vs.
Bandu Tukaram Khape & ors. — Respondents

Mr.K.S.Patil h/f. Mr.P.N.Joshi for petitioner.

Mr.Ujwal S. Patil h/f. for Mr.Anilkumar K. Patil for Resp.Nos.1(A) to 1(G).

CORAM: B.H.MARLAPALLE,J.

July 11, 2006.

P.C.

. Heard the learned counsel for the respective parties.

. This is a petition filed by the landlord challenging the orders passed by the Revenue Authorities below under the Bombay Tenancy and Agricultural Lands Act, 1948 ("the Tenancy Act" for short).

. The landlord filed Tenancy Application No.25 of 1983 initiating the proceedings under Section 32G of the Tenancy Act and initially after the said application was decided the Sub Divisional Officer, Satara directed the Addl. Tahsildar to ascertain the

ceiling area of holding of the tenant so that the ownership rights could be granted i.e. tenants' holding was within the ceiling limits and not beyond as set out under Section 5 of the Tenancy Act. The Addl. Tahsildar after hearing both the parties afresh passed an order on 13/5/1988 and directed the tenants to deposit an amount of Rs.31,568/- in four equal instalments with simple interest at the rate of 4 / 1/2 per cent and this amount was to be paid to the landlord. The ownership certificate under Section 32M was directed to be issued in favour of the tenants subject to the provisions of Section 43 of the said Act. The landlords challenged the said order before the SDO in Tenancy Appeal Nos.16 of 1989 and 17 of 1989. These appeals were decided by a common judgment and order dated 20/3/1990 and were dismissed. Only one of the landlords i.e. the present petitioner went in Revision Application before the Maharashtra Revenue Tribunal and the said Revision Application No.159 of 1990 came to be dismissed on 18/12/1998. This petition has been waiting for admission for the last about seven years and the first notice before admission was issued by this Court on 14/9/1999.

. It is no doubt true that the suit land admeasuring 25 acres and 26 gunthas which was under the cultivation of tenants and in addition to this land the tenants were holding land to the extent of 22 acres under Section 5 of the Tenancy Act, which was below the ceiling limit for the jirayat land i.e. 48 acres. It is contended by the learned counsel for the petitioner-landlord that the land being of superior quality an enquiry was required to be made so as to determine whether the ceiling limit could be 24 acres or 12 acres, as set out in sub-Section 2 of Section 5 of the Tenancy Act. This submission is fallacious. The Addl. Tahsildar in his order dated 13/5/1988 specifically noted that there was no well in the suit land and from the 7/12 extracts it was seen that the land was of medium and superior quality. The Addl. Tahsildar did not record finding that the land was under seasonal irrigation or perennial irrigation. There is a difference between a superior quality of land and land under irrigation and the language of the Statute cannot be changed just because the suit land is of superior quality. 25 acres and 26 gunthas plus 22 acres and 14 gunthas makes exactly 48 acres and, therefore, under clause (a) of Section 5(1) of the Tenancy Act, the ceiling

limit did not exceed.

. Under these circumstances, all the authorities below were of the unanimous view that the holding of the tenant inclusive of the suit land would not exceed the ceiling limits prescribed under Section 5(1)(a) of the Tenancy Act.

. Hence no interference is called for in the concurrent findings recorded by all the authorities below in this petition under Article 227 of the Constitution and the petition is rejected summarily.

(B.H.MARLAPALLE,J.)